

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Civil Action No.: 5:19-cv-438-FL

ALESSANDRO MASI,)
Plaintiff,)
v.)
MYTHICAL ENTERTAINMENT,)
Defendant.)

)

**DEFENDANT MYTHICAL ENTERTAINMENT'S
MOTION TO DISMISS**

Defendant Mythical Entertainment, by and through its undersigned attorneys, respectfully moves to dismiss the First Amended Complaint of Plaintiff Alessandro Masi ("Masi") pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure because Plaintiff's claims are barred by the statute of limitations and, in the event the Court finds Plaintiff's claim for statutory damages is not barred, any such award would be limited to the non-willful infringement of a single work.

In further support of this motion, Defendant refers to and incorporates herein by reference, its Memorandum of Law in Support of Defendant's Motion to Dismiss The First Amended Complaint and the exhibits attached hereto, namely: Exhibit 1, which is a true and correct screen-print of the online records of the United States Copyright Office for the copyright registration number set forth in paragraph 10 of Plaintiff's First Amended Complaint [D.E. 17]; Exhibit 2, which is a true and correct screen-print of Internet Archive's Wayback Machine's May 14, 2016

capture of the YouTube webpage for the April 10, 2015 episode of *Good Mythical Morning*; (<https://web.archive.org/web/20160514203721/https://www.youtube.com/watch?v=NxoU2HrXzpU>);¹ Exhibit 3, which is a true and correct screen-print of the Variety article by Joe Otterson entitled, ‘*Late Show With Stephen Colbert*’ Narrowly Tops Late-Night Ratings for 2018-2019 Season (<https://variety.com/2019/tv/news/late-show-with-stephen-colbert-ratings-2018-2019-1203223520/>);² and Exhibit 4, which is a true and correct screen-print of the results of a search using Public Access to Court Electronic Records (PACER) to obtain case and docket information from federal appellate, district, and bankruptcy courts for copyright infringement cases in which Masi is a plaintiff.

Each of the exhibits contains the kinds of facts that may be judicially noticed under Rule 201(b)(2) of the Federal Rules of Evidence because they are not subject to reasonable dispute since they can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Moreover, this Court may take judicial notice of public records without converting a motion to dismiss into a motion for summary judgment.” *Nunn v. Perry*, 2015 WL 11090928, at *1 (E.D.N.C. 2015) (citing *Philips v. Pitt Cnty. Mem'l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009)).

WHEREFORE, for all of the above reasons and those set forth in the Memorandum of Law in Support of Defendant’s Motion to Dismiss, Defendant Mythical Entertainment respectfully requests that the Court dismiss Plaintiffs’ Complaint.

¹ Hyperlink removed.

² Hyperlink removed.

Respectfully submitted this the 3rd day of December, 2019.

/s/ Christopher M. Thomas _____

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **DEFENDANT MYTHICAL ENTERTAINMENT'S MOTION TO DISMISS** was electronically filed on this day with the Clerk of Court using the CM/ECF system which will automatically send notice of the same addressed to the following:

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This 3rd day of December, 2019.

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